

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application of)
EMERSON COLLEGE) File No. BMPIF-960919AB
For Authority to Make Major Changes to)
Instructional Television Fixed Service Station)
WHR758 on Channel C1, Boston, Massachusetts)

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 2004

Released: March 17, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. Introduction. In this Memorandum Opinion and Order, we address Emerson College's (Emerson) above-captioned application for authority to modify Instructional Television Fixed Service (ITFS) station WHR758 on Channel C1, Boston, Massachusetts. Additionally, we address Hispanic Information and Telecommunications Network, Inc.'s (HITN) Petition to Deny Emerson's application.1 For the reasons stated below, we deny HITN's Petition.2

2. Background. ITFS stations are intended primarily to provide a formal educational and cultural development in aural and visual form.3 ITFS licensees make use of the spectrum to provide formal classroom instruction, distance learning, and videoconference capability to a wide variety of users.4 In 1998, the Commission adopted technical rule changes designed to provide ITFS licensees flexibility to employ digital technology in delivering two-way communications services including high-speed and high-capacity data transmission and Internet service on a regular basis.5

3. HITN is the permittee of ITFS Station WLX690, Providence, Rhode Island. That station operates on the B Group channels. On February 6, 1995, HITN filed an application to modify its

1 Petition to Deny filed by Hispanic Information and Telecommunications Network, Inc. (filed Oct. 9, 1997) (Petition).

2 On June 20, 2003, we dismissed Emerson's application for failure to respond a public notice asking ITFS applicants to affirm interest in their pending applications if the application was filed prior to March 25, 2002. See Wireless Telecommunications Bureau Announces Action on Responses to Public Notice Regarding ITFS, MDS, and MMDS Pending Applications, Public Notice, DA 03-2057 at Appendix B (rel. June 20, 2003). On October 10, 2003, Emerson's application was reinstated in response to Emerson's petition for reconsideration. See Wireless Telecommunications Bureau Grants Petitions for Reconsideration of ITFS, MDS, and MMDS Applications That Were Dismissed Without Prejudice on June 20, 2003, Public Notice, DA 03-3157 (rel. Oct. 10, 2003).

3 47 C.F.R. § 74.931.

4 Id.

5 See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97-217, Report and Order, 13 FCC Red 19112 (1998).

construction permit to relocate its transmitter site to a location in Tiverton, RI at coordinates 41° 35' 48" North Latitude and 71° 11' 24" West Longitude.⁶ That application was granted on September 29, 1995.⁷ Subsequently, on October 20, 1995, HITN filed another application to modify its construction permit to specify another site in Tiverton Rhode Island at coordinates 41° 52' 14" North Latitude and 71° 17' 45" West Longitude.⁸ That application was granted on June 19, 1998.⁹

4. Emerson filed the captioned application on September 19, 1996. The application appeared on public notice as accepted for filing on September 16, 1997.¹⁰ On October 9, 1997, HITN filed a timely petition to deny Emerson's application.¹¹ On October 22, 1997, Emerson, CAI Wireless Systems, Inc., Atlantic Microsystems, Inc. and Commonwealth License, Inc. filed a Joint Opposition to Petition to Deny.¹²

5. *Discussion.* In its Petition, HITN alleges that Emerson's proposed facilities will cause harmful interference within the Protected Service Area (PSA) of Station WLX690¹³ and requests that Emerson's application be dismissed. Emerson maintains that its proposed facilities would not interfere with Station WLX690, and it argues that HITN's engineering study is based upon an incorrect calculation of the PSA of Station WLX690.¹⁴ Emerson further contends that HITN's Petition is contrary to the "no objection" letter signed by HITN on August 21, 1997.

6. Based upon the record before us, we agree with Emerson that HITN has failed to demonstrate that Emerson's application would cause interference to Station WLX690. In this connection, we note that under the Commission's rules, adjacent channel interference will be considered present when a calculation using a terrain sensitive model determines that the ratio of desired to undesired (D/U) signal is less than 0 dB.¹⁵ HITN submitted a Declaration and a shadow map in support of its interference claim.¹⁶ HITN's interference analysis is based on the assumption that its PSA center is at the site specified in its October 1995 Modification Application. In fact, however, the PSA for Station WLX690 was frozen as of September 15, 1995, except that the PSA could be modified in accordance with the pending February 1995 Modification Application.¹⁷ Accordingly, HITN's Petition is defective.

7. Another problem with HITN's Petition is that it did not include detailed free space calculations for the D/U signal ratios to each location in question within its protected service area (PSA). HITN fails to provide information concerning the data its engineering consultant used to make her calculations. Without that information, it is impossible for the Commission's staff to evaluate the

⁶ File No. BMPLIF-950206DM (February 1995 Modification Application).

⁷ Broadcast Actions, Report No. 43609, *Public Notice* (rel. Oct. 10, 1995).

⁸ File No. BMPIF-951020N2 (October 1995 Modification Application).

⁹ Broadcast Actions, Report No. 44269, *Public Notice* (rel. Jun. 24, 1998).

¹⁰ See MMB ITFS Public Notice, Report No. 24077A, *Public Notice* (rel. Sep. 16, 1997)

¹¹ *See* Petition.

¹² Joint Opposition to Petition to Deny (filed Oct. 22, 1997). For ease of convenience, we will collectively refer to the parties that filed the opposition as "Emerson."

¹³ Petition, Declaration of Erica Sherman.

¹⁴ *See* Opposition.

¹⁵ *See* 47 C.F.R. § 21.902(f)(2).

¹⁶ *See* Petition, Declaration of Erica Sherman.

¹⁷ 47 C.F.R. § 21.902(d)(2).

engineering statement and determine whether HITN's engineering consultant accurately analyzed Emerson's proposal.

8. Nonetheless, because HITN raised a colorable claim of interference, we conducted our own engineering analysis to determine the application's compliance with the Commission's Rules. Our analysis considered the signal strengths that would occur in the PSA currently licensed to Station WLX690. Terrain obstructions and the standard 4/3 earth curvature were considered in our analysis. Based upon our engineering analysis and our review of the record in this proceeding, we conclude that Emerson's application complies with the Commission's Rules because the D/U signal ratios within HITN's PSA are all greater than 0 dB.¹⁸ Because the D/U signal ratios are all greater than 0 dB, we find that adjacent channel interference is not present. We therefore deny HITN's Petition.

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 21.30 of the Commission's rules, 47 C.F.R. § 21.30, that the Petition to Deny filed by the Hispanic Information and Telecommunications Network, Inc. on October 9, 1997 IS DENIED.

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 21.30 and 21.902 of the Commission's rules, 47 C.F.R. §§ 21.30, 21.902, that the licensing staff of the Broadband Division SHALL PROCESS Emerson's application (File No. BMPIF-960919AB).

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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¹⁸ In light of that conclusion, we need not consider Emerson's alternative argument that the Commission should waive its interference rules even if its application did not comply with those rules. See Joint Opposition at 5-7.